

THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of : VINING, et al.
Serial No. : 09/856,683
Filing Date : May 23, 2001
Examiner : Mercader, M
Group Art Unit : 3737
Entitled : "Virtual Endoscopy with
Improved Image Segmentation
and Lesion Detection "
Attorney Ref. : 0101-P01789US1

PETITION TO NULLIFY TERMINAL DISCLAIMER
UNDER 37 C.F.R. § 1.182

Applicant respectfully requests that the Terminal Disclaimer of February 25, 2005 be withdrawn, thus effecting its nullification prior to issuance of the instant patent application.

Applicant has noticed that the Terminal Disclaimer of February 25, 2005 erroneously includes a reference to US Patent No. 6,246,784, but rightly includes reference to US Patent Nos. 6,083,162, 5,782,762, and 6,694,163. Applicant is submitting herewith a corrected terminal disclaimer that omits reference to US Patent No. 6,246,784 and maintains the references US Patent Nos. 6,083,162, 5,782,762, and 6,694,163.

(Incidentally, omission of reference to US Patent No. 6,246,784 does not extend the term of the instant application, because the term of the instant application is shortened to a greater extent by disclaimer over US Patent No. 5,782,762, which remains in the accompanying corrected Terminal Disclaimer.)

The inclusion of US Patent No. 6,246,784 in the Terminal Disclaimer of February 25, 2005 is erroneous, because such patent is not assigned to, or under an obligation to be assigned to, Applicant of the instant patent application.

US Patent No. 6,246,784 was included in the Terminal Disclaimer to respond to paragraph number 6 of the official action of October 19, 2004, which states in relevant part that "claims 16 and 18 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 16 of U.S. Patent No. 6,246,784 in view of Rogers '157." However, Rogers '157 is also not assigned to, or under an obligation to be assigned to, Applicant of the instant patent application. Thus, the obviousness-type double patenting rejection of paragraph number 6 is improper.

However, in keeping with the guidance of MPEP 1490, Applicant chooses not to reopen the question of the propriety of the double patenting rejection that prompted the filing of the terminal disclaimer, so that the instant petition may be viewed favorably. Instead, Applicant is voluntarily filing herewith amendments canceling claims 16 and 18 as well as claims 17 and 19-22 that depend respectively therefrom. Thus, the rejection of paragraph number 6 is overcome by the attached claim amendments, and all remaining claims remain allowable.

The fees under 1.17(h) for the petitions under 1.313(c) and 1.182 are enclosed. In the event that any additional fee is required in connection with this submission and not enclosed, the Commissioner is authorized to charge Deposit Account No. 04-1406 of the undersigned attorneys.

Early and favorable consideration of this application is respectfully requested.

Respectfully submitted,
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